

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Montana State Office

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In Reply To:

1796 (923) P

December 13, 2006

EMAIL TRANSMISSION – 12/13/06

Instruction Memorandum No. MT-2007-014

Expires: 9/30/08

To: Field Managers

Attn: Planning and Environmental Coordinators

From: Deputy State Director, Division of Resources

Subject: Request for Compilation of Data for Cooperating Agency (CA) Report Regarding
Environmental Impact Statements (EISs) and Environmental Assessments (EAs)

DD: 12/18/2006

Program Area: Environmental Compliance – CA Procedures

Purpose: This Instruction Memorandum (IM) is to **inform** Field Managers and those specialists with oversight responsibilities for BLM Planning and National Environmental Policy Act (NEPA) documents about the FY 2007 Data Call for the CA Report to the Council on Environmental Quality (CEQ), and to **request** that the data be submitted electronically to the Montana State Office by **December 18, 2006**.

This IM is a reissue of an annual data call that has been conducted since FY 2002. For future reports, we hope that data relevant to this data call can be pulled directly from planning and NEPA registers; however, due to inconsistencies in how offices are using the planning and NEPA registers, this cannot yet be done. We plan for these inconsistencies to be remedied in time for future responses. Guidance on remedying these issues will be provided under a separate memorandum.

Although WO has not yet finalized the memorandum that will formally relay this data call, our expectation is that the information will still be due to WO within the next 2 weeks.

Policy/Action: This IM reflects guidance issued by the CEQ's Chairman on December 23, 2004, that changed the reporting mechanism for the CA Report. Federal agencies responsible for preparing NEPA analyses are to report to the CEQ once each fiscal year. The report to the CEQ is due 3 months after the close of the fiscal year; therefore, the FY 2006 report is due on January 2, 2007.

Data for EISs and EAs related to CAs should be provided using the appropriate table in Attachment 1. In addition, WO-210 is requesting summary figures for CXs, DNAs, EISs, and EAs to be provided in the table in Attachment 2.

For EISs with a Notice of Intent published between October 1, 2005, and September 30, 2006, the lead office will report: (1) the title of the EIS; (2) the names of the CAs for the EIS; (3) the names of agencies who declined an invitation to participate as a CA or who requested but failed to reach agreement on establishing CA status, and agencies whose CA status was ended, and the reason(s) CA status was not established or was ended; and (4) the current status of the EIS (Attachment 1).

Reports should include updates to previous reports on EISs. The reporting office will provide updated information (e.g.: new and/or terminated CAs; new EIS status) in subsequent FYs by submitting the previous EIS report with new information inserted and highlighted.

For EAs, the lead office will report: (1) the number of EAs completed between October 1, 2005, and September 30, 2006; (2) the number of those EAs which included participation of one or more CAs; and (3) the reasons agencies did not accept invitations or reach agreement to participate as CAs, or ended the CA status prior to completing the EA (Attachment 1).

The lead office is to provide information on EISs started during the FY 2006 reporting period, and on EAs completed during the FY 2006 reporting period. For purposes of this report, is started when the NOI is published in the Federal Register, and an EA is completed when a Finding of No Significant Impact (FONSI) is completed or a NOI to prepare an EIS is published.

Each office should email completed attachments to Katie A Stevens at Katie_A_Stevens@blm.gov.

Time Frame: Effective upon issuance. The due date is December 18, 2006.

Background: The CEQ issued updated guidance on CA status in implementing NEPA in December 2004. The procedures, requirements, and reporting format are based on recommendations from Federal agencies to more accurately measure their progress in assuring CA status to Federal and non-Federal governmental bodies that qualify for such status. As part of that guidance and to measure “progress in addressing the issue of CA status,” the CEQ initiated annual data calls to Federal agencies covering both EISs and EAs during the reporting period (currently October 1-September 30).

A CA is any Federal, state, or local governmental agency or tribe that has either jurisdiction by law or special expertise regarding environmental impacts of a proposal or reasonable alternative for a major Federal action significantly affecting the quality of the human environment (see 40 CFR 1501.6 and 1508.5). Although this definition would appear to limit CA procedures to EIS-level actions, in its memorandum the CEQ extended the procedures for occasional use in the

preparation of EAs. The CA status under the NEPA is not equivalent to other requirements calling for an agency to engage another governmental entity in a consultation or coordination process (e.g., Endangered Species Act-Section 7, National Historic Preservation Act-Section 106).

The attached document “Frequently Asked Questions and Answers” (Attachment 3) will provide information and clarification regarding the CEQ guidance and procedures.

Requested data (beyond the CEQ requirement) regarding all types of documents developed to comply with the NEPA should be provided using the table in Attachment 2. This information is necessary to supply the WO-210 with necessary information in order to respond to inquiries.

Budget Impact: For some offices this IM may result in additional workload estimated at less than one work day.

Manual/Handbook Sections Affected: None.

Coordination: N/A

Contact: If you have any questions concerning this memorandum, and to relay responses, please contact Katie Stevens, Planning and Environmental Coordinator, (406) 896-5246.

Signed by: Randy D. Heuscher, Acting
Authenticated by: Kathy Ray (922)

3 Attachments

- 1-CA Report to the CEQ (3 pp in its entirety)
- 2-Report on NEPA Compliance (1 p in its entirety)
- 3-CA Report to CEQ--Frequently Asked Questions and Answers (2 pp in its entirety)

Distribution w/Attms.

SOMT – 1

Assistant Field Manager, Havre Field Station – 1

Assistant Field Manager, Glasgow Field Station – 1

INSERT NAME OF AGENCY SUBMITTING THE REPORT

Cooperating Agency Report to the Council on Environmental Quality

October 1, 2004 to September 30, 2005

I. Environmental Impact Statements:

EIS TITLE <i>(Insert Title of each EIS for which your agency published a NOI during the fiscal year)</i>	COOPERATING AGENCIES <i>(Insert names of agencies that were invited and agreed to participate in the EIS process as Cooperating Agencies or that requested Cooperating Agency status and reached agreement with the lead agency to participate in the EIS process as Cooperating Agencies)</i>	CA STATUS NOT ESTABLISHED OR ENDED <i>(Insert the name(s) of any agency(ies) that: declined in writing –required for federal agencies, see 40 CFR 1501.6(c) – or verbally to participate as a Cooperating Agency; requested Cooperating Agency status but was unable to reach agreement to participate as a Cooperating Agency; or that assumed Cooperating Agency status which was subsequently ended <u>and</u> the reason Cooperating Agency status was not established or was ended – see 5 listed reasons below)</i>	
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Reasons CA status was not established or why it ended:

1. Potential Cooperating Agency lacked special expertise and jurisdiction by law.
2. Potential Cooperating Agency lacked authority to enter into an agreement to be a CA.
3. Potential or active CA lacked agreement with the agency.
(e.g., unable to accept the scope of the analysis or the purpose and need for the proposed action; unable to accept responsibilities and/or milestones for analysis and documentation; unable to develop information/analysis of all reasonable alternatives; unable to prevent release of predecisional information; misrepresents the process or the findings presented in the analysis and documentation).
4. Potential or active CA lacked capacity (training or resources) to participate.
(e.g., unable to participate during scoping and/or throughout the preparation of the analysis and documentation as necessary to meet process milestones; unable to identify significant issues, eliminate minor issues, identify issues previously studied, or identify conflicts with the objectives of regional, State and local land use plans, policies and controls in a timely manner; unable to assist in preparing portions of the review and analysis and help resolve significant environmental issues in a timely manner; unable to provide resources to support scheduling and critical milestones).
5. Other (specify).

II. Environmental Assessments:

	Total
Number of EAs completed by your agency during the fiscal year	
Number of those EAs your agency prepared with CAs	
The reason(s) from the list below that cooperating agency status was not established or was ended (NOTE: agencies may replace this row of the report with a paragraph describing the most frequent reasons)	(number) EAs – reason # (number) EAs – reason # (number) EAs – reason # (number) EAs – reason # (number) EAs – reason #

Reasons CA status was not established or why it ended:

1. Potential Cooperating Agency lacked special expertise and jurisdiction by law.
2. Potential Cooperating Agency lacked authority to enter into an agreement to be a CA.
3. Potential or active CA lacked agreement with the agency.
(e.g., unable to accept the scope of the analysis or the purpose and need for the proposed action; unable to accept responsibilities and/or milestones for analysis and documentation; unable to develop information/analysis of all reasonable alternatives; unable to prevent release of predecisional information; misrepresents the process or the findings presented in the analysis and documentation).
4. Potential or active CA lacked capacity (training or resources) to participate.
(e.g., unable to participate during scoping and/or throughout the preparation of the analysis and documentation as necessary to meet process milestones; unable to identify significant issues, eliminate minor issues, identify issues previously studied, or identify conflicts with the objectives of regional, State and local land use plans, policies and controls in a timely manner; unable to assist in preparing portions of the review and analysis and help resolve significant environmental issues in a timely manner; unable to provide resources to support scheduling and critical milestones).
5. Other (specify).

Report to the Washington Office, Bureau of Land Management
XXXX Field Office, XXXX District, XXXXX State Office, BLM

October 1, 2005 to September 30, 2006

Documents prepared to comply with the NEPA

Method used to Document compliance with NEPA	Number
Environmental Impact Statements (EIS)	
EISs Supplemented	
EISs Adopted from others	
Environmental Assessments (EA)	
EAs Adopted from others	
Categorical Exclusions (CX)	
CXs to comply with the Energy Policy Act of 2005 (separate from those above)	
CXs to comply with the Programmatic Fire CXs (separate from those above)	
Decisions of NEPA Adequacy (DNA)	
Actions Tiered to another NEPA document	
Emergency Actions	
Congressionally Exempt (Statutory)	
Other actions not listed above	
Total Number of Actions requiring NEPA compliance	

Comments:

Cooperating Agency Report to the Council on Environmental Quality Frequently Asked Questions and Answers

1. What are the major changes between the reporting requirement established in January 2002 and this reporting requirement?

The major changes: (1) increase the reporting period from six to twelve months; (2) align the reporting period with the fiscal year; (3) decrease the amount of information reported; (4) simplify the identification of challenges or barriers to establishing CA Status; and (5) report completed rather than initiated environmental assessments.

2. Do agencies report Environmental Impact Statements (EISs) and Environmental Assessments (EAs) if they are a Cooperating Agency (CA)?

No. Report only those EAs and EISs that the agency is responsible for preparing. When more than one Federal agency has National Environmental Policy Act (NEPA) responsibilities (e.g. one funds or approves a project that another implements) then the agencies should work together, either as joint-leads or as lead and cooperating agencies, to avoid duplicative NEPA work. The lead office responsible for preparing the EA or EIS is responsible for submitting the CA report.

3. Who reports the EIS or EA when there are joint lead agencies responsible for preparing the EIS or EA?

Joint lead agencies can be involved when a Tribe, state or local agency with a requirement comparable to NEPA, or another Federal agency either (1) proposes or is involved in the same action, or (2) is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity [see 40 CFR §§1501.5 and 1506.2]. When a Federal agency is a joint-lead agency with a Tribal, state or local government, the Federal agency will report the EA or EIS. When more than one Federal agency is a joint-lead, the Federal joint-lead agencies should agree on which one Federal agency will report the EA or EIS. Although a formal document to establish CA Status is not required, the agencies involved need to clearly understand their respective roles and a formal document or exchange of letters may be helpful in correcting misunderstandings brought on by changing personnel and priorities. When a formal document or an exchange of letters is used, the agency with reporting responsibility should be identified.

4. Which EAs and EISs are reported?

The report will provide information on EISs started during the FY reporting period and on EAs completed during the FY reporting period. For purposes of this report, an EIS is begun when the Notice of Intent (NOI) is published in the Federal Register, and an EA is completed when a Finding of No Significant Impact is completed or a NOI to prepare an EIS is published.

5. What is required for an agency to be reported as a Cooperating Agency?

Attachment 3

Agencies with either "jurisdiction by law" or "special expertise" are eligible to be cooperating agencies. When they are invited and agree to be cooperating agencies or their request for CA Status is granted, then they qualify and should be reported as cooperating agencies. When more than one federal agency has NEPA responsibilities – or in the case of tribal, state or local governments, responsibilities for requirements in addition to but not in conflict with those in NEPA – then the agencies should work together, either as joint-leads or as lead and cooperating agencies, to avoid redundant, duplicative NEPA work and CA Status is one way to accomplish these responsibilities. Agencies with a permitting or approval role, often referred to as consulting agencies, can be invited to be cooperating agencies and lead agencies are encouraged to actively consider extending CA Status to such agencies.

6. Does the cooperating agency's name go on the EA or EIS?

Yes. For an EIS, the cover must list all cooperating agencies (Federal and non-Federal) as required by Section 1502.11 of the CEQ NEPA regulations [see <http://ceq.eh.doe.gov/nepa/regs/000925letter.html>]. An EA must list the agencies consulted [see 40 CFR §1508.9]. Agencies with CA Status can be listed as a subset of those consulted.

7. Which agencies must be reported when CA Status is not established or is ended?

Agencies should be reported in the EIS column "CA Status not Established or Ended" and in the EA report's third row or optional explanatory paragraph when:

- (1) An agency declines an invitation to participate as a CA in writing or verbally. Federal agencies are required to decline in writing and to provide a copy of their reply to the invitation to the Council on Environmental Quality (see 40 CFR §1501.6(c)).
- (2) An agency requests CA Status but an agreement to participate as a CA is not reached with the agency responsible for the NEPA analysis and documentation.
- (3) An agency whose CA Status was established but ended prior to completion of the NEPA analysis and documentation.

The reporting agency must indicate the reason that the CA Status was not established or was ended. Five main categories of reasons, with examples, are provided on the report form. When there are several reasons, provide the primary reason(s) for not establishing or ending the CA Status.

8. How will agencies update the EIS information in subsequent fiscal years?

The reporting agency will provide updated information (for example: new CAs agencies; EIS status) in subsequent FYs by submitting the previous EIS report with new information inserted and highlighted.